

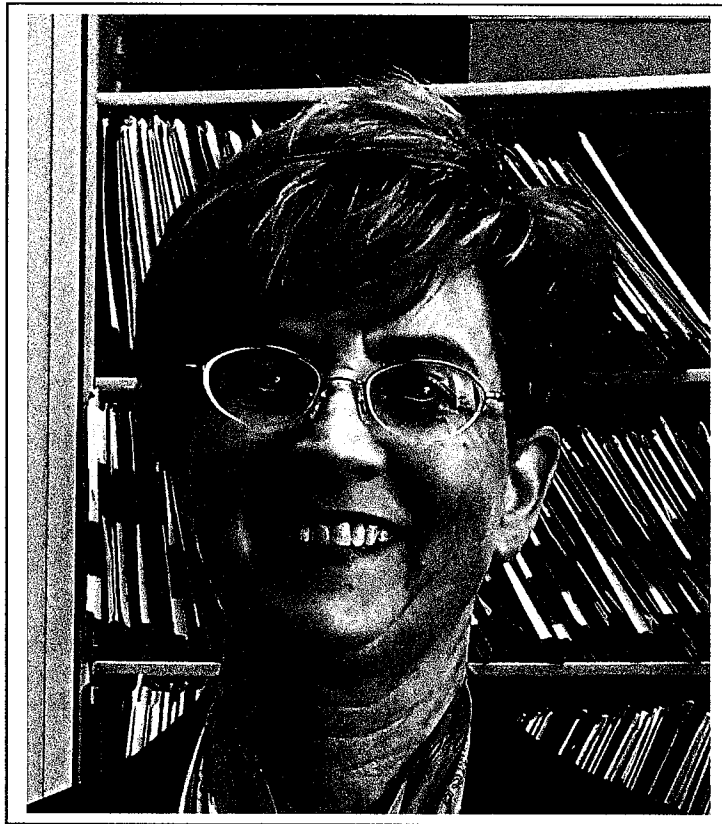
COMMISSION ON JUDICIAL SELECTION

APPLICATION

**NEVADA SUPREME COURT
SEAT G**

By

Harriet E. Cummings
(Insert applicant name)



**SECTION I: PUBLIC INFORMATION
(QUESTIONS 1 THROUGH 47)**

Personal Information

1. Full Name: **Harriet E. Cummings**
2. Have you ever used or been known by any other legal name (including a maiden name)? If so, state name and reason for the name change and years used. **No (but some people call me by the nickname of "Hank").**
3. Work Address: **201 S. Carson Street, Carson City, Nevada 89701**
4. How long have you been a continuous resident of Nevada? **27 years**
5. Age: **56** (NRS 2.020 states that a Supreme Court justice must be at least 25 years old.)

Employment History

6. Using the format provided in Attachment "A" please start with your current employment or most recent employment, self-employment, and periods of unemployment for the 20 years immediately preceding the filing of this Application.

Current or Last Employer: Nevada Supreme Court

Phone Number: (775) 684-1600

Address: 201 S. Carson Street, Carson City, NV 89701

From: March 2009 **to:** present

Supervisor's Name: Tracie K. Lindeman, Esq.

Supervisor's Job Title: Clerk of Court

Your Title: Chief Assistant Clerk of Court

Specific Duties: Second in command in Supreme Court Clerk's Office; also serve as Administrative Counsel and legal advisor to Supreme Court Settlement Program:

Court duties (2009-present): Assist in various aspects of running the Clerk's Office and serve as acting Clerk of Court when Clerk is unavailable. Office functions consist of docketing of cases, filing and processing of documents, internal screening, resolving motions, reporting/publication of court decisions, statistical reporting, and handling emergencies; 30-person office consists of supervisors, attorneys, paralegals, clerks, editorial staff and administrative assistants. Attend oral arguments in Carson City, Las Vegas and rural Nevada. Attend confidential post-argument conferences, draft conferences and submitted case conferences. Create minutes of proceedings and confidential argument notes. Prepare draft conference agendas. Answer internal inquiries from Justices' chambers, central legal staff, law librarians, clerk's office staff, and the administrative office of the courts regarding substantive and procedural matters. Respond to external requests from district court judges and clerks, attorneys, litigants and the public regarding court policies and procedures. Draft correspondence, procedural and substantive memoranda, orders, and opinions pertaining to both civil and criminal matters. Issue writs as directed by court. Draft petitions and rule amendments for matters on the court's administrative

docket. Train new law clerks, staff attorneys, judges, and court staff regarding judicial branch structure, the appellate process and court internal operating procedures. Fulfill committee assignments and complete special projects.

Administrative Counsel duties (2015-present): Provide legal advice to Court Administrator, Chief Justice, and deputy administrators regarding non-judicial court matters, including judicial branch administration, judicial programs and services, foreclosure mediation program, and information technology. Topics include court online payment systems, independent contractor agreements, public records requests, unrepresented litigants, media issues, ethics, judicial education, court security, court facilities, and pending/potential litigation involving the judiciary/AOC. Draft contract provisions. Review contracts and contract amendments and recommend revisions. Provide feedback regarding letters in support of grants and memoranda of understanding. Draft responses and recommend revisions to legal correspondence. Answer internal questions regarding Nevada law and the Nevada judicial system. Respond to external inquiries regarding matters pertaining to judicial administration, including insurance, guardianships, open meeting laws, pro bono attorneys, conflicts of interest, language access issues, and electronic search warrants.

Settlement Program duties (2015-present): Supervise settlement program administrative coordinator overseeing all aspects of civil appellate settlement conference program, which includes assignment of cases to program, monitoring cases for rule compliance, distribution of monthly statistical reports regarding program progress, selection/evaluation of settlement judges, settlement judge training, training budget, billing/travel claims, core committee administration, and review of program rules and policies. Respond to coordinator's substantive and procedural questions regarding matters assigned to the program and provide feedback regarding draft orders. Draft memoranda, procedural orders, and dispositions in settlement-related matters. Respond to inquiries from the public, program participants, settlement judges, court staff, and justices regarding program-related issues. Write and teach regarding appellate mediation. Provide periodic program reports to Chief Justice, Supreme Court Justice-Liaison, and Clerk of Court.

Reason for Leaving: n/a—current position

Previous Employer: Nevada State Public Defender's Office

Phone Number: (775) 684-1080

Address: 511 E. Robinson Street #1, Carson City, NV 89701

From: September 1997 **to:** March 2009

Supervisor's Name: James. P. Logan, Jr., Esq.

Supervisor's Job Title: Chief Appellate Deputy

Your Title: Appellate Deputy

Specific Duties:

Represented criminal defendants on direct appeal in felony, gross misdemeanor, juvenile, termination of parental rights, and death penalty cases. Pursued petitions for extraordinary relief (including habeas corpus, mandamus, prohibition and certiorari) in Nevada District Courts, the Nevada Supreme Court, and the United States Supreme Court. Represented clients before the parole board in revocation proceedings and before the pardons board in clemency proceedings. Assisted trial department by appearing in juvenile court and by representing misdemeanants at initial appearances and pretrial conferences. Assisted Public Defender with legislative liaison duties, early spring 2009; testified before legislature, spring 2005. Served as interim supervisor, Winnemucca office, fall 2004.

Reason for Leaving: To accept position as Chief Assistant Clerk of Nevada Supreme Court.

Previous Employer: United States District Court, District of Nevada

Phone Number: (775) 686-5800

Address: 400 S. Virginia Street, Reno, Nevada 89501

From: September 1995 **to:** September 1997

Supervisor's Name: Honorable Phyllis Halsey Atkins

Supervisor's Job Title: United States Magistrate Judge

Your Title: Law Clerk

Specific Duties:

Researched federal and state law. Drafted legal memoranda; reports and recommendations regarding dispositive motions; orders regarding non-dispositive motions; and findings of fact, conclusions of law and judgments. Attended court proceedings, including hearings, bench trials, and jury trials, in civil and criminal matters. Settled jury instructions. Conferred with judge in chambers regarding pending cases.

Reason for Leaving: Clerkship ended; accepted position as Appellate Deputy Public Defender.

Previous Employers: Please note that I have significant other full-time legal experience that is not detailed here due to the 20-year limitation on employment history, including five years as an appellate staff attorney at the Nevada Supreme Court; clerking for a Nevada Supreme Court Justice; and, in California, working for Legal Services in Sacramento and Auburn and as a legal writing instructor at McGeorge School of Law in Sacramento.

Educational Background

7. List names and addresses of high schools, colleges and graduate schools (other than law school) attended; dates of attendance; certificates or degrees awarded; reason for leaving.

Post-Graduate Education:

Nevada Certified Public Manager Program, 2012-2013

555 E. Washington Avenue, Suite 1400

Las Vegas, Nevada 89101

(I attended the Carson City cohort, however)

C.P.M. awarded October 2014

Left because graduated

Colleges:

The Johns Hopkins University, 1978-1982

3400 North Charles Street

Baltimore, Maryland 21218

B.A., Humanistic Studies, awarded May 1982

Left because graduated

University of Arizona Guadalajara Summer School, summer 1981

1230 N. Park Ave. #206

Tucson, Arizona 89721

(This is the most recent mailing address I could find. The program does not appear to be in operation any longer—program was physically located in Guadalajara,

Application Deadline: 5:00 p.m. Friday September 9, 2016

Jalisco, Mexico)
Was there to attend Spanish immersion program
Left because completed my courses

Towson University (known then as Towson State University), summer 1980
8000 York Road
Towson, Maryland 21252
Took a summer school class so I could qualify for more advanced classes at JHU
Left because completed the class

High School:

Nogales High School, 1974-1978
1905 North Apache Boulevard
Nogales, Arizona 85621
(it was at a different address when I attended, however)
Diploma awarded May 1978
Left because graduated

- 8 Describe significant high school and college activities including extracurricular activities, positions of leadership, special projects that contributed to the learning experience.

College:

Independent Study Project: "Foster Care: The Current System in Maryland." Study emphasized the influence of the legal system on children's lives and changes needed in the law to make the system function properly.

Mayor's Fellow. Juvenile Division Intern, Baltimore City Legal Aid Bureau.

JHU Tutorial Project. Tutored underprivileged children in math, reading, writing and social skills.

JHU Jazz Ensemble. Alto saxophonist.

JHU Band. Flutist.

JHU Chamber Music Ensemble. Flutist.

American Red Cross, Chesapeake Region. Volunteer.

High School: (Please note: list is incomplete. I no longer have any records so this is from memory.)

Academics: National Honor Society member, Science Club member.

Student Government: Served on Student Council (Band Representative); Chair of Election Commission.

Music: Played in Concert Band (section leader), Marching Band (line leader), Jazz Band, Pep Band, Dixieland Band, and various small ensembles. Sang in Chorus. Instruments included flute, piccolo, alto and tenor saxophone, piano, and trumpet.

Theater: Member of Mime Troupe that performed throughout the Southwest; participated in school plays in various roles including acting, stage crew, and directing; member of Speech Team.

9. List names and addresses of law schools attended; degree and date awarded; your rank in your graduating class; if more than one law school attended, explain reason for change.

Law School:

University of California, Davis, King Hall School of Law, 1984-1987
400 Mrak Hall Drive
Davis, California 95616
J.D. awarded May 1987
Class Rank: top 50%
Attended only one law school

10. Indicate whether you were employed during law school, whether the employment was full-time or part-time, the nature of your employment, the name(s) of your employer(s), and dates of employment.

Legal Research Assistant. Professor Jean C. Love, University of California, Davis, School of Law. Summer 1985, part time.

Teaching Assistant. Legal Research and Writing, University of California, Davis, School of Law. 1985-1986, part-time.

Judicial Extern. Honorable Lawrence K. Karlton, Chief Judge, United States District Court, Eastern District of California, Sacramento. Spring 1986, part-time.

Law Clerk. City Attorney's Office, Sacramento, California. Summer 1986, full time.

Class Tutor. Torts, University of California, Davis, School of Law. 1986-1987, part-time.

Bar Review Site Administrator. Bar-Bri, Davis, California. Summer 1987, part-time. .

Legal Research Assistant. Professor Richard Delgado, University of California, Davis, School of Law. Summer 1987, part-time.

11. Describe significant law school activities including offices held, other leadership positions, clinics participated in, extracurricular activities.

Moot Court Board. Chair, Judge Recruitment and Scheduling Committee. Moot court judge.

The Advocate. Editor-in-Chief. Assistant Editor. Staff writer, photographer and cartoonist.

King Hall Legal Foundation. Vice President. Member, Board of Directors, public interest law organization.

Martin Luther King Memorial Committee. Member, coalition of student group leaders that commissioned sculpture for law school lobby.

Women's Caucus. Member. Panel mediator and organizer, Women's Job Conference.

Phi Delta Phi's Big Sib Program. Acted as "Big Sister" to give personal and academic support to first year law students.

Cardozorama. Talent show performer and stage crew sound technician.

Yolo County Concert Band. Flutist.

American Bar Association. Member, Law Student Division.

Law Practice

12. State the year you were admitted to the Nevada Bar. **1990**
13. Name states (other than Nevada) where you are or were admitted to practice law and your year of admission. **California 1988. I was also admitted to practice in the United States District Court for the Eastern District of California in 1988, and the United States Supreme Court in 1998.**

14. Have you ever been suspended, disbarred, or voluntarily resigned from the practice of law in Nevada or any other state? If so, describe the circumstance, dates, and locations. **No.**
15. Estimate what percentage of your work over the last 5 years has involved litigation matters, distinguishing between trial and appellate courts. **For judges**, answer questions 16-20 for the 5 years directly preceding your appointment or election to the bench. **(Please note: although I am not a sitting judge, because of my current employment within the judiciary, I am similarly situated to a judge with regard to the response to this series of questions. Accordingly, I have answered questions 16-20 for the 5 years directly preceding my current position.)** **100%. I spent approximately 75% of my time doing appellate work (direct appeals and habeas corpus appeals) and 25% doing pre-trial/post-conviction/relief-board work: misdemeanor arraignments, pretrial hearings, post-conviction habeas corpus at the trial court level, revocation hearings before the parole board, and representing clients appearing before the pardons board.**
16. Estimate percentage of time spent on (1) domestic/family and juvenile law matters, (2) civil litigation, (3) criminal matters, and (4) administrative litigation.
- domestic/family and juvenile law matters: 5% (juvenile, termination of parental rights)**
civil litigation: 5% (trial level habeas—quasi civil/criminal)
criminal matters: 75% (pre-trial, appeals)
administrative litigation: 15% (parole revocations, pardons)
17. In the past 5 years, what percentage of your litigation matters involved cases set for jury trials vs. non-jury trials? **N/A. I was primarily an appellate attorney and my non-appellate work involved everything but trials—arraignments and pretrial hearings before justices of the peace, evidentiary hearings before district judges in habeas matters, representing clients before the parole board, and presenting cases to the pardons board.**
18. Give the approximate number of jury cases tried to a conclusion during the past 5 years with you as lead counsel. Give the approximate number of non-jury cases tried to a decision in the same period. **N/A. As noted, I was primarily an appellate practitioner.**
19. List courts and counties in any state where you have practiced in the past 5 years. **United States Supreme Court, Washington, D.C.; Nevada Supreme Court, Carson City; First Judicial District Court, Carson City; Justice and Municipal Courts, Carson City; Sixth Judicial District Court, Pershing and Humboldt Counties (it has since been divided into two districts); Seventh Judicial District Court, White Pine County.**
20. List by case name and date the five cases of most significance to you (not including cases pending in which you have been involved), and list or describe:
- a. case name and date,
 - b. court and presiding judge and all counsel
 - c. the importance of each case to you and the impact of each case on you,
 - d. your role in the case.

Hübel v. Sixth Judicial District Court of Nevada, Humboldt County. On Petition for a Writ of Certiorari, Opinion Affirming, June 21, 2004. United States Supreme Court (Justice Kennedy authored the majority, in which Chief Justice William Rehnquist and Justices Sandra Day O'Connor, Antonin Scalia, and Clarence Thomas joined; Justice John P. Stevens dissented, as

did Justice Stephen Breyer, who was joined by Justices David Souter and Ruth Bader Ginsburg). Nevada State Public Defender (James P. Logan, Jr., Harriet E. Cummings, Robert E. Dolan) for petitioner; Nevada Attorney General (Brian Sandoval, Conrad Hafen) and Humboldt County District Attorney (David Allison) for respondent. There were also a total of ten amicus briefs filed in the case (seven on behalf of petitioner and three on behalf of respondent).

Importance to and impact on me:

This case was important because of its national significance: the United States Supreme Court grants few certiorari petitions so it was a rare opportunity to participate in a case before the country's highest court, and it garnered both national and international attention. Moreover, the case was important to me because it confirmed that even the "little guy" is entitled to his day in court: in this instance, a rural rancher, who was convicted of "just" a misdemeanor and given a \$250 fine for refusing to give his name to law enforcement--yet he had his case heard by the highest court in the land. Although we ultimately lost the case 5-4, constitutional scholars from across the country had predicted that the best we could do was a 6-3 decision, so the fact that we lost by only one vote was considered a minor victory (for the office, though of little practical consequence to Mr. Hiibel). The case had a significant impact on me because it provided an opportunity to work as part of a team and on the national stage, whereas usually the office assigned only one attorney to work on a case at a time and our work had an impact on, at most, the state level. The prospect of being able to consult with constitutional scholars and work with privacy advocates from across the country was thrilling indeed: we worked with numerous organizations who volunteered to submit amicus briefs on behalf of our client; and held moot courts at law schools from coast to coast (in several of which I took on the role of opposing counsel to make the experience more complete). I was also designated as backup counsel in the event the attorney assigned to argue the case was unable to do so. The case also stretched me beyond my comfort zone, because I was designated the media liaison despite no previous experience dealing with the media. I gave interviews to radio, print, and television media so that counsel who was arguing the case could focus on preparation. Personal highlights in this endeavor included addressing Alan Dershowitz's 1L class and discussing the briefs with Laurence Tribe at Harvard Law School, and being interviewed at the CNN studios in Washington, D.C., on the eve of argument. To think that I could contribute to a case of national importance was simultaneously awe-inspiring and humbling.

My role: Assisted in writing the brief and reply brief to the United States Supreme Court on behalf of petitioner; argued in the role of opposing counsel in moot courts; and served as media liaison.

Joseph Alario. Pardons Board Applicant, Clemency granted, November 21, 2002. Nevada Board of Pardons Commissioners (Governor Kenny Guinn, Chairman; Attorney General Frankie Sue Del Papa, Chief Justice A. William Maupin, Justices C. Clifton Young, Miriam Shearing, Deborah Agosti, Robert E. Rose, Myron E. Leavitt, and Nancy A. Becker). Nevada State Public Defender (Steven G. McGuire, Harriet E. Cummings) on behalf of applicant; Clark County District Attorney (I don't specifically recall who spoke on behalf of the state; Stewart Bell was the elected District Attorney for Clark County at the time) in opposition.

Importance to and impact on me:

This was important to me because of its international aspect, the decision-makers were high-ranking officials, and, most importantly, the stakes for my client were high: Mr. Alario faced ultimately dying in a Nevada prison, or living as a free man in his native France. It fell upon me to convince the governor and a majority of the pardons board that my client, a French national, was deserving of clemency despite the fact that he had been convicted of murder some twenty years earlier and had been sentenced to life in prison without the possibility of parole. In the ten years previous to the pardons board hearing, he had incurred just one prison disciplinary

infraction. The French consulate had become involved and was in favor of clemency because French law did not have a comparably harsh sentence for the crime. I worked closely with the Consul General of France, as well as Mr. Alario's family and supporters, and was successful in obtaining a unanimous vote in favor of a reduction in sentence which would permit him to be released from prison, conditioned upon his being deported to France and never returning. However, upon being returned to France, because of a misunderstanding by French authorities regarding the nature of his sentence following clemency, he was imprisoned once again and I continued to work with the French consulate to clarify the terms of his commutation, which led to his eventual release. This case positively impacted me in several ways, because it afforded me an unusual opportunity to work with authorities from another country; because doing so took me outside my comfort zone; and because Mr. Alario was extremely grateful for my advocacy on his behalf. He still refers to me as his "angel from heaven," and over the years has written me reports of his progress, sharing photos of himself with his family and grandchildren in France, whom he never would have seen again had the pardons board not extended him mercy.

My role in the case: Appointed counsel on behalf of pardons board applicant; argued case before the pardons board.

Starry v. State. State Post-Conviction Habeas Appeal, Order of Reversal and Remand, January 31, 2003. Nevada Supreme Court (Justices Robert E. Rose and Nancy A. Becker in the majority; Justice Miriam Shearing dissented). Nevada State Public Defender (Steven G. McGuire, Harriet E. Cummings), for appellant; Nevada Attorney General and Humboldt County District Attorney (Frankie Sue Del Papa, David G. Allison, Conrad Hafen) for respondent.

Importance to and impact on me:

This case was important to me because it was a hard-fought victory for my client. Mr. Starry had filed a pro se post-conviction petition for a writ of habeas corpus in state district court, which I then supplemented with significant factual and legal arguments. I filed a motion for expert witness fees which the district court denied, and subsequently sought funding for a different expert which was granted. Following two evidentiary hearings, in which I presented expert testimony and examined both trial and appellate counsel, the district court denied relief. On appeal, I contended (among other things) that Mr. Starry had been denied the effective assistance of trial counsel. The Nevada Supreme Court agreed, issuing an order of reversal and remand. Rarely have I seen the court reverse on the basis of ineffective assistance of counsel without oral argument. This case had a significant impact on me because, following a careful review of the record, I became convinced that Mr. Starry was not guilty and had been wrongly convicted of child sexual assault and lewdness charges. As a consequence, I felt a heavy weight knowing that, without my effective assistance on appeal, he would be spending a minimum of forty years in prison. Although I was successful in obtaining a reversal on appeal and Mr. Starry was very grateful for my advocacy on his behalf, he left prison a broken man, having lost thirteen of the most productive years of his life to a crime he likely did not commit. I often wonder what became of him and if he was ever able to piece his life back together again.

My role: Appointed to represent client in post-conviction habeas corpus proceedings in district court and on appeal to the Nevada Supreme Court.

Laxton v. State. Direct Appeal, Order of Reversal and Remand, December 21, 2004. Nevada Supreme Court (Justices Nancy A. Becker, Deborah Agosti, and Mark Gibbons). Nevada State Public Defender (Steven G. McGuire, Harriet E. Cummings), for appellant; Nevada Attorney General and White Pine District Attorney (Richard W. Sears, Kevin R. Briggs) for respondent.

Importance to and impact on me:

This appeal was important because it was high stakes: Mr. Laxton was originally charged with open murder with use of a deadly weapon for which the state sought the death penalty. He

had been convicted of second-degree murder with use of a deadly weapon and sentenced to two consecutive terms of 10-25 years in prison when I got his appeal. It was important to me because, although there was no question that my client had killed his best friend in a drunken argument, following a thorough review of the record I became convinced that he had not received a fair trial. On appeal, the Nevada Supreme Court agreed with my arguments that the district court abused its discretion by admitting certain evidence of prior bad acts, by allowing inadmissible opinion testimony, and by refusing to offer a defense jury instruction. Consequently, it reversed Mr. Laxton's judgment of conviction and remanded for a new trial. This case had a significant impact on me because it rekindled my belief that effective appellate advocacy truly can make a difference. This was not an easy case: had I not worked so hard to present the facts in a more fair manner than occurred at trial, had I conducted less thorough research into the legal issues, had I not prepared so thoroughly for argument, the outcome could very well have been different.

My role: Appointed appellate counsel on behalf of appellant (briefed and argued).

Miranda v. State. Direct Appeal, Opinion Reversing and Remanding, April 9, 1998. (Chief Justice Charles E. Springer, Justices Miriam Shearing, Robert E. Rose, and C. Clifton Young in the majority; Justice A. William Maupin dissented). Nevada State Public Defender (Steven G. McGuire, Kent Hart, Harriet E. Cummings) for appellant. Nevada Attorney General and Carson City District Attorney (Frankie Sue Del Papa, Noel S. Waters, Melanie Bruketta, Jennifer Suter) for respondent.

Importance to and impact on me: This was one of the first cases I argued before the Nevada Supreme Court and my first as a practicing attorney to result in a published opinion. The district court had increased Mr. Miranda's sentences for felony DUI upon learning that the original sentence was illegal. The Supreme Court reversed and remanded, holding that increasing the sentences was unnecessary to correct the illegality and therefore violated Mr. Miranda's right against Double Jeopardy under the Nevada Constitution. The case had a positive impact on me because it impressed upon me that a state court may, and in this case did, interpret its state constitution to grant broader rights than under the federal constitution. Also, garnering a published "win" in my first year of employment as a criminal defense attorney gave my confidence a boost, helped establish my reputation as a force to be reckoned with, and helped advance the development of Nevada law because the decision had statewide impact.

My role: Appointed counsel who argued the case to the Nevada Supreme Court on behalf of appellant.

21. Do you now serve or have you previously served as a mediator, an arbitrator, a part-time or full-time judicial officer, or a quasi-judicial officer? To the extent possible, explain each experience. **No. My only "quasi-judicial" experience is serving as a moot court judge during and after law school. However, I have received training in both basic and advanced mediation.**
22. Describe any pro bono or public interest work as an attorney.

Nevada Boys' State. Annual Mock Court Program. Supreme Court Coordinator and Speaker, 2009-present.

State of Nevada Board of Continuing Legal Education. Chair, 2012-2014; Vice-Chair, 2009-2011; Chair, Supreme Court Rule Amendment Committee, 2009; Chair, Bylaws Revision Committee, 2006-2009; Chair, Regulation Review Committee, 2005; Member, National Meeting Planning Committee, 2013-2014; Member, Personnel Manual Committee 2011-2014; Member, Board of Directors, 2000-2014.

Nevada Attorney General's Law Enforcement Summit. Speaker, Supreme Court Tour, 2016.

Pau-Wa-Lu Middle School. Speaker, Ninth Grade Class Supreme Court Tour, 2012.

Jacks Valley Elementary School. Speaker, Fifth Grade Class Supreme Court Tour, 2012.

Nevada Youth Legislature. Speaker, 2010; Mock Judge, 2009.

Partners in Education. Volunteer State Judge, *We the People Competition*, 1995.

23. List all bar associations and professional societies of which you are or have been a member. Give titles and dates of offices held. List chairs or committees in such groups you believe to be of significance. Exclude information regarding your political affiliation.

American Bar Association. Member, 1985-present. Elected as an American Bar Foundation Fellow, 2016 (fellows are limited to 1% of state's bar membership).

Northern Nevada Women Lawyers Association. Member, Outstanding Woman Lawyer Award Committee, 1999.

Nevada Supreme Court Committee to Study Procedures Governing Litigation Pursued by Way of Extraordinary Writs in the Nevada Courts. Member, 1998.

Nevada Capital Cases Resource Center Advisory Committee. Member, 1995-1997.

American Inns of Court. Bruce R. Thompson Chapter. Member, 1995-1997.

24. List all courses, seminars, or institutes you have attended relating to continuing legal education during the past 5 years. Are you in compliance with the continuing legal education requirements applicable to you as a lawyer or judge? **Yes.**

Advanced Civil Mediation, National Judicial College, Reno, NV, August 2016.

Show Me the Money: Grant Writing Tips and Tricks, Administrative Office of the Courts, webinar, June 2016.

Settlement Judge Training: Techniques and Best Practices in Civil Mediation at the Appellate Level, Administrative Office of the Courts, Reno and Las Vegas, NV, June 2016.

Civil Mediation Course, National Judicial College, Reno, NV, May 2016.

Mediator Safety Awareness Training, Foreclosure Mediation Program, Carson City, NV, February 2016.

Sexual Harassment Prevention, Administrative Office of the Courts, video course, December 2015.

50-State Surveys on WestlawNext, Thomson-Reuters, Carson City, NV, October 2015.

Citation Checking on WestlawNext, Thomson-Reuters, Carson City, NV, October 2015.

So You Think You Can Only Do That on Westlaw Classic? Thomson-Reuters, Carson City, NV, October 2015.

Ethics Research on WestlawNext, Thomson-Reuters, Carson City, NV, September 2015.

Advanced WestlawNext, Thomson-Reuters, Carson City, NV, August 2015.

Transitioning from Classic Westlaw to WestlawNext, Thomson-Reuters, Carson City, NV, July 2015.

Annual Meeting, State Bar of Nevada, Seattle, WA, July 2015.

Advanced Judicial Writing, Administrative Office of the Courts, Carson City, NV, May 2015.

Western Region Conference, Conference of State Court Administrators, Incline Village, NV, May 2015.

Nevada Supreme Court 2014 Criminal Opinions Review, Administrative Office of the Courts, Carson City, NV, February 2015.

Annual Meeting, State Bar of Nevada, Newport Beach, CA, July 2014.

Employment Law Research, Thomson-Reuters, Carson City, NV, June 2014.

Intermediate WestlawNext, Thomson-Reuters, Carson City, NV, June 2014.

Legal Ethics and Professional Responsibility, Thomson-Reuters, Carson City, NV, March 2014.

Intro to WestlawNext, Thomson-Reuters, Carson City, NV, March 2014.

Criminal Opinions Review, Administrative Office of the Courts, Carson City, NV, March 2014.

Annual Mid-Year Meeting, Continuing Legal Education Regulators Association, Las Vegas, NV, February 2014.

Under the Ethics Microscope: Setting an Example for Your Court, Administrative Office of the Courts, Carson City, NV, webinar, November 2013.

Criminal Statutes Review, Nevada Supreme Court Central Legal Staff, Carson City, NV, October 2013.

Nevada Legislative Review, Administrative Office of the Courts, Carson City, NV, webinar, September 2013.

Fastcase Training, Nevada Supreme Court Library, Carson City, NV, August 2013.

Constitutional Law and Civil Procedure Case Review, Nevada Supreme Court Central Legal Staff, Carson City, NV, July 2013.

Annual Meeting, State Bar of Nevada, Stateline, Nevada, July 2013.

Family, Administrative, and Employment Law Case Review, Nevada Supreme Court Central Legal Staff, Carson City, NV, May 2013.

Federal Language Assistance Mandate and How It Impacts Nevada Courts, Administrative Office of the Courts, Carson City, NV, webinar, May 2013.

Contracts, Torts, and Medical Malpractice Case Review, Nevada Supreme Court Central Legal Staff, Carson City, NV, April 2013.

Reading Law and Advanced Judicial Writing, Law Prose, Inc., Carson City, NV, March 2013.

Real Property Review, Nevada Supreme Court Central Legal Staff, Carson City, NV, March 2013.

The 4G Court: A Current Snapshot, Administrative Office of the Courts, Carson City, NV, webinar, March 2013.

Annual Mid-Year Meeting, Continuing Legal Education Regulators Association, Austin, TX, February 2013.

Criminal Case Review, Nevada Supreme Court Central Legal Staff, Carson City, NV, January 2013.

Nevada Ethics in Government Law, Certified Public Manager Program, Carson City, NV, November 2012.

Rural & Urban Nevada Social Justice Institute, University of Nevada, Reno, September 2012.

Annual Meeting, State Bar of Nevada, San Diego, CA, June 2012.

Nevada Judicial Leadership Summit, Administrative Office of the Courts, Las Vegas, NV, May 2012.

Disciplinary Board Training, State Bar of Nevada Office of Bar Counsel, Reno, NV, April 2012.

Annual Mid-Year Meeting, Continuing Legal Education Regulators Association, Savannah, GA, February 2012.

West KM, Thomson-Reuters, Carson City, NV, September 2011.

25. Do you have Professional Liability Insurance or do you work for a governmental agency? **I do not have professional liability insurance: I work for a governmental agency.**

Business and Occupational Experience

26. Have you ever been engaged in any occupation, business, or profession other than a judicial officer or the practice of law? If yes, please list, including the dates of your involvement with the occupation, business, or profession.

Starting at age 16, I began working numerous part-time and summer jobs in order to put myself through school. In high school I waited tables at a 24-hour diner (summer 1977) and worked as a camp counselor at two different music camps (summer 1978). In college I worked for a department store (summer 1979), as an office clerk (summer 1980), as a part-time research assistant to a blind professor (summer 1981), as a part-time library assistant (1979-1982), and at a delicatessen (1982-1983). Between college and law school, I worked full time for the law firm of Adelberg, Rudow, Dorf, Hendler and Sameth as a runner and paralegal (1982-1984).

27. Do you currently serve or have you in the past served as a manager, officer, or director of any business enterprise, including a law practice? **No.** If so, please provide details as to:
- a. the nature of the business,
 - b. the nature of your duties,
 - c. the extent of your involvement in the administration or management of the business,
 - d. the terms of your service,
 - e. the percentage of your ownership.
28. List experience as an executor, trustee, or in any other fiduciary capacity. Give name, address, position title, nature of your duties, terms of service and, if any, the percentage of your ownership. **N/A.**

Civic, Professional and Community Involvement

29. Have you ever held an elective or appointive public office in this or any other state? **No.** Have you been a candidate for such an office? **No.** If so, give details, including the offices involved, whether initially appointed or elected, and the length of service. Exclude political affiliation.
30. State significant activities in which you have taken part, giving dates and offices or leadership positions.

Douglas High School. Member, Music Boosters organization, 2016-present.

America's Most Beautiful Bike Ride. Spooner Rest Stop Volunteer, 2009-2015.

Nevada Moves Day. Volunteer, 2010-present; Co-leader, JVES Bicycle Bus, 2011.

American Youth Soccer Organization. Volunteer, 2008-2011.

Jacks Valley Elementary School. Band Booster, 2012-2014; Volunteer, 2007-2014; Member, Parent Teacher Student Organization, 2007-2008.

Alta Alpina Cycling Club. Member, 1997-present; Volunteer, Alta Alpina Challenge, 2010-2013; Board of Directors, Newsletter Editor, 2000-2002.

Western Nevada College Child Development Center. Member, Parent Action Board, 2003-2008; Chair, Teacher Appreciation Week Committee, 2004-2008; Member, Assessment Committee, 2006.

Family to Family Connection. Member, Parent Advisory Board, 2003.
The Death Ride Annual Bicycle Tour of the California Alps. Volunteer, 1997-2007.
Carson Valley Classic Bicycle Race. Volunteer, 1999-2001.
Brewery Arts Center. Volunteer, 1996-2001.
United Way of Northern Nevada and the Sierra. Cabinet Member & Agency Coordinator, 1993-94.

31. Describe any courses taught at law schools or continuing education programs. Describe any lectures delivered at bar association conferences.

Presenter (with others), *Nevada Supreme Court Settlement Judge Training: Back to the Basics—Review of Program Requirements*, a presentation for Nevada Supreme Court Settlement Judges, Administrative Office of the Courts (Reno and via video to Las Vegas, NV, June 17, 2016).

Presenter, *2015 Amendments to the Nevada Rules of Appellate Procedure*, a presentation for justices, judges, lawyers, and court staff (Carson City, NV, May 27, 2015).

Presenter, *Appellate Courts 101*, an online presentation for new appellate court employees (recorded in Carson City, NV, May 18, 2015).

Presenter, *Nevada's New Court of Appeals*, a presentation for NALS of Nevada (Reno, NV, March 21, 2015).

Preparer, *Nevada Courts: The Role and Impact of Technology*, a presentation by Nevada Supreme Court Chief Justice Mark Gibbons, e-Courts Conference, National Center for State Courts (Las Vegas, NV, December 9, 2014).

Presenter, *Court Lawyer Training: Supreme Court Overview*, an online continuing education seminar for Supreme Court law clerks and staff attorneys, Administrative Office of the Courts (recorded in Carson City, NV, August 15, 2014).

Preparer (with others), *Tips to Increase the Likelihood of Being Affirmed on Appeal*, a presentation by Nevada Supreme Court Justices, Nevada District Judges Annual Seminar (North Las Vegas, NV, April 25, 2014).

Presenter (with Chief Justice Mark Gibbons), *The Future of CLE in Nevada*, a seminar for the Continuing Legal Education Regulators Association (Las Vegas, NV, February 24, 2014).

Presenter, *Law Clerk Training Part II: Anatomy of the Appellate Process*, a continuing education seminar for Supreme Court law clerks and new employees (Carson City, NV, October 31, 2013).

Preparer (with others), *The One Promise Campaign and Ethics for Success on Appeal*, a presentation by Nevada Supreme Court Justices, Nevada Justice Association Conference (Seattle, WA, October 4, 2013).

Presenter, *Law Clerk Training Part I: Overview*, a continuing education seminar for Supreme Court law clerks and new employees (Carson City, NV, October 3, 2013).

Presenter, *Supreme Court Survival*, a continuing education seminar for NALS of Nevada's Annual Legal Survivor Course (Carson City, NV, June 7, 2013).

Presenter, *Third Branch Overview*, a continuing education seminar for staff of the State Bar of Nevada and the Administrative Office of the Courts (Las Vegas, NV, April 26, 2013, and Carson City, NV, April 29, 2013).

Presenter, *Supreme Court Overview*, a continuing education seminar for Nevada Supreme Court attorneys and staff (Carson City and via video to Las Vegas, NV, September 28 & October 11, 2012).

Presenter, *The Appellate Process*, a continuing education seminar for Nevada Supreme Court attorneys and staff (Carson City and via video to Las Vegas, NV, October 5 & 11, 2012).

Presenter, *Introduction to the Nevada Supreme Court*, a continuing education seminar for Douglas Carson Legal Professionals (Carson City, NV, October 3, 2012).

Presenter, *Anatomy of An Appeal*, a continuing education seminar for law clerks and new attorneys at the Nevada Supreme Court (Carson City and via video to Las Vegas, NV, October 26, 2011).

Presenter, *Introduction to the Nevada Supreme Court*, a continuing education orientation seminar for law clerks and new attorneys at the Nevada Supreme Court (Carson City and via video to Las Vegas, NV, October 19, 2011).

Presenter (with others), *Case Processing at the Nevada Supreme Court*, a continuing education orientation seminar for law clerks at the Nevada Supreme Court (Carson City and via video to Las Vegas, NV, February 17, 2011).

Presenter, *Overview of the Criminal Justice System in Nevada*, and *Overview of the Nevada Supreme Court*, training seminars for members of the Nevada Judicial Discipline Commission (Reno, NV, June 29, 2010).

Presenter (with others), *Changes to the Nevada Rules of Appellate Procedure*, a continuing education seminar for the State Bar of Nevada's Annual Meeting (Incline Village, NV, June 12, 2009).

Presenter (with others), *Gilmore v. Ashcroft*, a moot court presentation sponsored by the American Constitution Society, Loyola Law School (Los Angeles, CA, April 18, 2005).

Lecturer (with others), *Looking Ahead to the Appeal: Substantive and Procedural Considerations*, a continuing education seminar for the Office of the Nevada State Public Defender (Winnemucca, NV, October 22, 2004; Ely and Carson City, NV, September 9-10, 2004).

Presenter (with others), *May I See Your ID?*, a moot court presentation sponsored by the Harvard Journal of Law and Technology (Cambridge, MA, March 9, 2004).

Guest Lecturer (with others), *Fourth and Fifth Amendment Issues*, a moot court presentation for the 1L Criminal Law class of Professor Alan Dershowitz, Harvard Law School (Cambridge, MA, March 9, 2004).

Opposing Counsel, *Hiibel v. Sixth Judicial District Court*, a moot court presentation of a pending United States Supreme Court case (University of Nevada, Las Vegas, Boyd School of Law, March 4, 2004; McGeorge School of Law, February 24, 2004).

Lecturer, *Appellate Practice for Trial Attorneys*, a continuing education seminar for the Office of the Nevada State Public Defender (Ely, NV, October 24, 2003).

Presenter (with others), *Ethics Essentials for District Court Judges*, an interactive judicial ethics program presented to the Nevada District Court Judges Annual Seminar (Reno, NV, April 26, 2002).

Lecturer, *Criminal Practice: Fast Track Criminal Appeals*, a presentation on Practice Before the Supreme Court of Nevada for the State Bar of Nevada (Reno and Las Vegas, NV, April 17-18, 2002).

Presenter (with others), *Ethics Essentials for Magistrate Judges*, an interactive judicial ethics program presented to the Nevada Justices of the Peace and Municipal Court Judges Annual Seminar (Jackpot, NV, June 27, 2001).

Lecturer, *Appellate Jurisdiction in Criminal Cases* and *Writing an Appellate Brief*, presentations on Effective Appellate Practice Before the Supreme Court of Nevada for Volunteer Attorneys for Rural Nevadans (Carson City, NV, May 19, 2000).

Lecturer, *Appellate Practice for Trial Attorneys*, a continuing education seminar for the Office of the Nevada State Public Defender (Ely, Winnemucca, and Carson City, NV, July 27-30, 1999).

Presenter (with others), *Ethics for Public Attorneys*, an interactive continuing education seminar for the Office of the Attorney General of Nevada (Carson City and Las Vegas, NV, June 29-30, 1999).

Presenter (with others), *Ethics: A Serious Game*, an interactive legal ethics program presented to the State Bar of Nevada (Reno and Las Vegas, NV, December 3-4, 1997); Nevada Attorneys

for Criminal Justice (Las Vegas, NV, November 25, 1997); and the American Inns of Court (Reno, NV, June 10, 1997).

Lecturer and Panelist, *The Role and Proper Presentation of Briefs*, a continuing education seminar for the State Bar of Nevada (Reno, NV, February 1, 1996).

Lecturer, *Written Advocacy: Writing an Effective Appellate Brief*, a continuing education seminar on Effective Advocacy Before the Supreme Court of Nevada for the State Bar of Nevada (Carson City and Las Vegas, NV, September 9, 1993).

Lecturer, *Writing an Appellate Brief*, a presentation on Appellate Advocacy for the American Inns of Court (Carson City, NV, June 24, 1992).

32. List educational, military service, service to your country, charitable, fraternal and church activities you deem significant. Indicate leadership positions.

Community Chest, Inc. Non-profit organization in Virginia City serving children and families in northwestern Nevada. Secretary-Treasurer, 2014-present; Staff Mentor, 2013-present; Member, Board of Directors, 2012-present.

Boy Scouts of America, Nevada Area Council. Assist Boy Scout Troop 33 with Popcorn/Camp Card Fundraisers, 2014-present; Member, Pinenut District Membership Subcommittee, 2014; Member, Troop 411 Fundraising Committee, 2013; Troop Volunteer, 2013-present; Chair, Cub Scout Pack 33 Campout Committee, 2011-2012; Co-Chair, Pack 33 Fundraising Committee, 2011-2012; Member, Pack 33 Leadership Committee 2011-2013; Den Volunteer, 2008-2013.

Yolo County, California, Sexual Assault Center. Co-authored manual and video, "Prevention of Physical and Sexual Abuse Among Adolescents," for Youth Assault Prevention Program, 1985.

33. List honors, prizes, awards, or other forms of recognition.

Post-Law School:

American Bar Foundation Fellow
Who's Who in American Law
Who's Who of American Women
Dictionary of International Biography
Who's Who in California

Law School:

Honors:

American Jurisprudence Award, Criminal Law
American Bar Association Award of Excellence for Written Editorial on Broader Aspects of the Law
Martin Luther King, Jr., Service Award Honoree
Who's Who Among American Law Students
Women Lawyers of Sacramento's Award for Outstanding Academic Achievement and Community Service

Scholarships/Fellowships/Grants:

University of California, Davis, Alumni Association Scholarship.
State Graduate Fellowship.
Grant Recipient, King Hall Legal Foundation.
Grant Recipient, American Bar Association, Law Student Division.
Distinguished Scholar Fellowship.

College:

Honors:

Dean's List
Mayor's Fellow

Scholarships:

Elk's Lodge National Association Scholarship
Nogales, Arizona, Elk's Club Scholarship

High School: (Please note: List is from memory and incomplete, as I no longer have records.)

Academics:

Received numerous medals and certificates for academic achievement.

Student Government:

Voted most likely to succeed. Selected as Girl's State alternate.

Music:

Selected for All State Band and Arizona Bicentennial Band; lettered in music; received medals and awards for performances on flute and trumpet at regional and state music competitions.

Theater:

Advanced to the next level in competitions.

34. Have you at anytime in the last 12 months belonged to or do you currently belong to any club or organization that in practice or policy restricts (or restricted during the time of your membership) its membership on the basis of race, religion, creed, national origin or sex? **No.** If so, detail the name and nature of the club(s) or organization(s), relevant policies and practices, and whether you intend to continue as a member if you are selected for this vacancy.
35. List books, articles, speeches and public statements published, or examples of opinions rendered, with citations and dates.

Publications:

Author, *The Role and Need for Settlement Judges in Appellate Cases*, in NEVADA LAWYER, Vol. 24, Issue 3 at 22-24 (State Bar of Nevada, March 2016).

Author, *Appellate Misconduct* and accompanying test questions/answers, in NEVADA LAWYER, Vol. 14, Issue 11 at 42-47 (State Bar of Nevada, November 2006).

Author, *Appellate Jurisdiction: Filing a Timely Appeal in a Felony Case*, in NEVADA LAWYER, Vol. 14, Issue 9 at 24-26 (State Bar of Nevada, September 2006).

Author, *What Determinations are Appealable?* in UNREASONABLE DOUBT, Vol. X, No. 3 at 31-35 (Nevada Attorneys for Criminal Justice, March 2000).

Author, *Who is the "Party Aggrieved" for Purposes of Appeal?* in UNREASONABLE DOUBT, Vol. X, No. 2 at 21-24 (Nevada Attorneys for Criminal Justice, December 1999).

Author, *Filing a Timely Appeal*, in UNREASONABLE DOUBT, Vol. X, No. 1 at 22-25 (Nevada Attorneys for Criminal Justice, September 1999).

Author, *Alternative Dispute Resolution*, in COVERING THE COURTS IN NEVADA (Nevada Supreme Court Bench-Bar-Media Committee, 1993).

Published Cases:

Saletta v. State, 127 Nev. 416, 254 P.3d 111 (2011) (on briefs only)

Knipes v. State, 124 Nev. 927, 192 P.3d 1178 (2008)

Anderson v. State, 121 Nev. 511, 118 P.3d 184 (2005)

Hiibel v. Sixth Judicial Dist. Court of Nev., Humboldt Cty., 542 U.S. 177 (2004)
 (on briefs only)
Allred v. State, 120 Nev. 410, 92 P.3d 1246 (2004)
Rowland v. State, 118 Nev. 31, 39 P.3d 114 (2002)
Abrego v. State, 118 Nev. 54, 38 P.3d 868 (2002)
Libby v. State, 115 Nev. 45, 975 P.2d 833 (1999), *cert. denied*, 527 U.S. 1119 (2000)
Holmes v. State, 114 Nev. 1357, 972 P.2d 337 (1998)
Miranda v. State, 114 Nev. 385, 956 P.2d 1377 (1998)

Credited in Works By Others:

Shaun T. Griffin, *ANTHEM FOR A BURNISHED LAND: WHAT WE LEAVE IN THIS DESERT OF WORK AND WORDS* (Southern Utah University Press, 2016).
 Major Jay L. Thoman, *Conquering Competency and Other Professional Responsibility Pointers for Appellate Practitioners*, 11 Army Law. 4 (2011).
 Richard Sobel, *Troubles with Hiibel: How the Court Inverted the Relationship Between Citizens and the State*, 48 S. Tex. L. Rev. 613 (2007).
 Dan Saxon, *TO SAVE HER LIFE: DISAPPEARANCE, DELIVERANCE, AND THE UNITED STATES IN GUATEMALA* (University of California Press, 2007).
 NEVADA APPELLATE PRACTICE MANUAL, 2004 Edition, Ch. 9 at 9.1, 9.2, 9.17.
 Richard Delgado, *Rodrigo's Chronicle*, 101 Yale L.J. 1357 (1992).
 Richard Delgado, *Our Better Natures: A Revisionist View of Joseph Sax's Public Trust Theory of Environmental Protection, and Some Dark Thoughts on the Possibility of Law Reform*, 44 Vand. L. Rev. 1209 (1991).
 Richard Delgado, *Pep Talks for the Poor: A Reply and Remonstrance on the Evils of Scapegoating*, 71 B.U. L. Rev. 525 (1991).
 Richard Delgado, *Brewer's Plea: Critical Thoughts on Common Cause*, 44 Vand. L. Rev. 1 (1991).
 Richard Delgado, *Derrick Bell and the Ideology of Racial Reform: Will We Ever Be Saved?* 97 Yale L.J. 923 (1988).
 Jean C. Love, *Retaliatory Discharge for Filing a Worker's Compensation Claim: The Development of a Modern Tort Action*, 37 Hastings L. J. 551 (1986).

36. During the past 10 years, have you been registered to vote? **Yes.** Have you voted in the general elections held in those years? **Yes.**

37. List any vocational interests and hobbies.

Walking, hiking, camping, bicycling, snowshoeing, and skiing. Reading, family travel, music, and volunteering.

Conduct

38. Have you ever been convicted of or formally found to be in violation of federal, state or local law, ordinance or regulation? Provide details of circumstances, charges and dispositions. **No.**

39. Have you ever been sanctioned, disciplined, reprimanded, found to have breached an ethics rule or to have acted unprofessionally by any judicial or bar association discipline commission, other professional organization or administrative body or military tribunal? **No.** If yes, explain. If the disciplinary action is confidential, please respond to question 71.

40. Have your ever been dropped, suspended, disqualified, expelled, dismissed from, or

placed on probation at any college, university, professional school or law school for any reason including scholastic, criminal, or moral? **No.** If yes, explain.

41. Have you ever been refused admission to or been released from any of the armed services for reasons other than honorable discharge? **No.** If yes, explain.
42. Has a lien ever been asserted against you or any property of yours that was not discharged within 30 days? **No.** If yes, explain.
43. Has any Bankruptcy Court in a case where you are or were the debtor, entered an order providing a creditor automatic relief from the bankruptcy stay (providing in rem relief) in any present or future bankruptcy case, related to property in which you have an interest? **No.**

Other

44. If you have previously submitted a questionnaire or Application to this or any other judicial nominating commission, please provide the name of the commission, the approximate date(s) of submission, and the result. **N/A**
45. In no more than three pages (double spaced) attached to this Application, provide a statement describing what you believe sets you apart from your peers, and explains what particular education, experience, personality or character traits you possess or have acquired that you feel qualify you as a good supreme court justice. In so doing, address both the civil (including family law matters) and criminal processes (including criminal sentencing.) **Please see Attachment #1, Personal Statement of Harriet E. Cummings.**
46. Detail any further information relative to your judicial candidacy that you desire to call to the attention of the members of the Commission on Judicial Selection.
I have received significant continuing education not only in law, but also in management and supervision as well as general skills training in a variety of topics pertinent to a court environment.
47. Attach a sample of no more than 10 pages of your original writing in the form of a decision, "points and authorities," or appellate brief generated within the past 5 years, which demonstrates your ability to write in a logical, cohesive, concise, organized, and persuasive fashion. **Please note: because of my current employment within the judiciary, my work product is confidential. Moreover, I cannot claim authorship because any substantive order or disposition I draft is for the justices' signatures. Accordingly, I have selected a writing sample from the 5-year period preceding my current position. The attached 10-page writing sample, Attachment #2, is from my opening brief in the case of Laxton v. State (consisting of excerpts from the Statement of the Case, Procedural History and Statement of Relevant Facts, Legal Argument, and Conclusion).**

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(CONFIDENTIAL INFORMATION) ON NEW PAGE - -

ATTACHMENTS

ATTACHMENT #1

PERSONAL STATEMENT

PERSONAL STATEMENT OF HARRIET E. CUMMINGS

As demonstrated in my application, I am highly qualified to become the next Nevada Supreme Court Justice. My background in appellate practice and court management, together with my teaching and writing experience as well as my community involvement, give me the qualifications and experience to make me uniquely well-suited to the position.

My legal experience is extensive and varied. I spent approximately twelve years as the appellate deputy at the State Public Defender's office doing mostly criminal work, where my primary focus was appellate practice, though I practiced in justice and district courts as well. As a Supreme Court staff attorney for five years, I worked on cases in virtually all areas of civil and criminal law. As a legal services attorney in California, my work consisted of civil cases involving various aspects of poverty law. Moreover, in my present capacity as Chief Assistant Clerk of Court, in addition to serving as administrative counsel and legal advisor to the civil settlement program, I already participate in many key activities of a justice, albeit in a different capacity. For example, I prepare for and attend oral arguments and draft conferences, but my current role is as scribe rather than participant. I relish the opportunity to have more of a voice in the process.

Appellate work tends to have an academic focus, an environment I find quite comfortable. I regularly teach continuing education seminars and have written articles, primarily on topics related to appellate practice and ethics. I taught legal writing at McGeorge School of Law in Sacramento, California, and have training in advanced judicial writing and as a settlement judge. I constantly strive to better myself so that I may share that knowledge and be of greater service to others.

In addition to my experience and academic qualifications, I also bring to the position leadership ability and community involvement. I am committed to public service both professionally and personally. Currently, I serve as an officer on the Board of Directors of Community Chest, a non-profit organization serving children and families in northern Nevada. As the former Chair of the Board of Continuing Legal Education, I was the driving force behind many reforms and spoke at a national conference. While in law school I sat on the Moot Court Board, was Editor-in-Chief of the school newspaper, and served on the Board of Directors of the Legal Foundation, receiving numerous awards recognizing my dedication to excellence. Giving back to the profession and the community at large keeps me grounded and allows me to “pay it forward,” in recognition of the many forms of support that have helped get me to where I am today.

To conclude, I believe my background, education, and experience equip me to make a unique and valuable contribution to Nevada’s judiciary. My legal career to this point has been diverse and rewarding because I have been able to help many different types of people at all levels. Becoming a justice will allow me to contribute in an even more meaningful, enduring way, by providing an opportunity to continue my commitment to public service and allow for the highest and best use of my talents as an appellate practitioner, court manager, and community leader. I know firsthand the difficult and important tasks of judging, and am prepared to work hard to further the mission of Nevada’s highest court. I am enthusiastic about the position and am grateful for the opportunity to apply.

I look forward to meeting with the members of the Commission. Thank you very much for your consideration.

Sincerely,

Harriet E. Cummings

ATTACHMENT #2

WRITING SAMPLE

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II.

STATEMENT OF THE CASE

This is an appeal from a judgment of conviction, entered pursuant to a jury verdict, of one count of second degree murder with use of a deadly weapon, a category A felony in violation of NRS 200.030 and 193.165. Seventh Judicial District Court, White Pine County, Dan L. Papez, District Court Judge.

Appellant James Laxton stabbed his best friend, Frederick "Red" Wilson, following a drunken argument in which Red taunted James mercilessly. The central question at trial was whether James acted in self defense. Although this case originated as a death penalty case, ultimately the verdict was for second degree murder. James was sentenced to two consecutive sentences of twenty-five years in prison with minimum parole eligibility of ten years, and thus will not be eligible for parole for at least twenty years.

In this appeal, James challenges the district court's decisions admitting evidence of prior bad acts, limiting the testimony of the defense expert regarding the physical and cognitive effects of being knocked unconscious, overruling defense counsel's objection to a detective giving his opinion that it was unlikely officers would find the broken beer bottle James said Red had brandished, and rejecting a proffered defense instruction pertaining to defense of one's home in the context of self defense. James also raises issues challenging certain jury instructions and the sufficiency of the evidence, as well as sentencing issues. As will be demonstrated, prejudicial error infected the proceedings such that reversal of James' conviction is warranted.

III.

PROCEDURAL HISTORY AND STATEMENT OF RELEVANT FACTS

Appellant James Laxton was arrested on October 18, 2001, and charged with open murder with use of a deadly weapon in the stabbing death of his best friend, Frederick "Red" Wilson, at James' home in Ely, Nevada, that evening.

1 App. at 2-3. The next day, the state filed a notice of intent to seek the death penalty.
2 App. at 4-5. Following a preliminary hearing, App. at 6-56, James was bound over
3 for trial. App. at 55. He was charged by way of information with open murder with
4 use of a deadly weapon. App. at 57-59.

5 Prior to trial, James filed a motion in limine to exclude evidence of
6 alleged prior bad acts, arguing they were inadmissible character evidence that was
7 both irrelevant and highly prejudicial. App. at 60-65.¹ The state opposed the motion,
8 arguing the evidence was relevant to intent, the *res gestae*, and malice. App. at 72-
9 81. James filed a reply in which he contended that the acts in question had no
10 probative value and were highly prejudicial; that witnesses could describe what
11 happened without delving into prior bad acts; and that the prior bad acts did nothing
12 to prove malice. App. at 82-88. Following a hearing, the district court took the
13 matter under advisement. 6/17/02 Hearing of Motions (HT) at 58. At the start of
14 trial, the district court allowed the evidence on grounds it was relevant to state of
15 mind and *res gestae*, but disallowed it for the other purposes argued by the
16 prosecution. 6/17/02 to 6/21/02 Trial Transcript ("TT") at 1-7; see also TT at 271-73.

17 Regarding the circumstances surrounding Red's death, the following
18 was adduced at the trial held June 17-21, 2002:

19 On October 18, 2001, a group of people had gathered at the home of
20 James and Stormie Laxton in Ely, Nevada, and they were partying, talking and
21 drinking beer throughout the afternoon and evening. TT at 200. The group
22 ultimately included the Laxtons, Robert Kelly, and 20-year-old Jared Taylor. TT at
23 96-97.² They drank inside and outside the home. At some point in the early
24 evening, Frederick "Red" Wilson showed up and Jared Taylor offered him a beer.

25
26 ¹The defense also filed a motion in limine seeking to exclude admissions James made to
27 the police, which the state opposed. App. at 66-71, 89-113. Defense counsel subsequently
withdrew that motion for tactical reasons. 6/17/02 Transcript of Motions Hearing ("HT") at
3-10; 6/17/02 to 6/21/02 Transcript of Trial ("TT") at 1.

28 ²Other people were there in the afternoon but wound up leaving. TT at 201, 202, 230.

1 TT at 205, 232. Red was already drunk when he arrived. TT at 259. Red was
2 laughing and joking around. TT at 235, 245. They were getting along just drinking
3 beer. TT at 253, 259.

4 After an hour or two Red brought up the subject that James had
5 cheated on Stormie by having an affair with Red's ex-girlfriend Alisha. TT at 103,
6 236, 245, 253, 258-59. Stormie told Red that she already knew. TT at 236. Red
7 was still laughing and joking, as he thought the whole affair was funny. TT at 245.
8 But then James told Red that he didn't feel bad for what he had done, and that
9 angered Red. TT at 236, 245. Red and James started arguing. TT at 205-06. They
10 were yelling at each other. TT at 206. Red then went outside and sat with Jared
11 Taylor on the porch for a few minutes. TT at 206, 236. Stormie offered Red a ride
12 but he said no. TT at 237, 246. She left for the store, leaving their baby at home.
13 TT at 237, 246, 249.

14 Jared told Red to mellow out because he was a little out of control, but
15 Red ignored him. TT at 206, 216. Red said he was just messing with James, that he
16 just wanted to push him. TT at 206-07, 215-16. But Jared said it appeared to be
17 something more serious than that, the way they were arguing, yelling and screaming.
18 TT at 217. It was over and above just button-pushing. TT at 218.

19 James came out of the house and he and Red started arguing some
20 more. TT at 207, 254. Red acknowledged that he was angry. TT at 207, 218.
21 James took off his shirt and challenged Red to a fight. TT at 207. At first Red
22 ignored him. TT at 207. Jared went back in the house, but Robert Kelly was still
23 outside with James and Red. TT at 207, 254, 261. Red punched James in the
24 head, knocking him to the ground. TT at 254, 259. For at least two minutes after
25 being punched James was blurry headed, not all there. TT at 254-55. Red had
26 knocked him nearly unconscious, leaving him dazed and unable to talk. TT at 260.
27 This left a contusion, which later formed into a bruise underneath James' eye on his
28 cheek. TT at 71-72, 115-16, 175. Robert Kelly picked up James and got him into

1 the house. TT at 254, 260. He and Jared told Red to leave James alone and
2 suggested that Red leave, but Red wouldn't leave. TT at 254-55, 260, 261. James
3 was fuming mad inside the house. TT at 208, 255. Robert considered James'
4 reaction to being punched as normal: "If somebody knocked me on my butt I'd be
5 upset, too." TT at 255-56.

6 By this time it was dark. TT at 222. Red remained outside. TT at 261.
7 He was trying to come back into the house but they wouldn't let him in. TT at 255,
8 261. He never came back into the house. TT at 208, 255. He was standing at the
9 screen door yelling and screaming. TT at 256. There was a lot of swearing and
10 cussing going on. TT at 256. Most of the foul language was coming from Red. TT
11 at 218. Jared said that Red was the antagonistic one, the one provoking the
12 situation. TT at 218. Red was saying things like, "you bitch, you pussy, come on
13 fight, fight me." TT at 209. Red told James to "come out and I'll kill you." TT at 256.
14 James was pleading with Red to "go home, Red, go home." TT at 210. Red came
15 up to the screen door trying to come in. TT at 210, 261. James started kicking the
16 door. TT at 210. Each time, Red would try to reach inside. TT at 211. Red would
17 pull open the screen door and swing at James, and James would throw open the
18 screen door and swing at Red. Neither one landed any blows. TT at 256-57. This
19 went on for a few minutes. TT at 257. Then James pulled out the silverware drawer
20 in the kitchen, dumping silverware and knives all over the floor. TT at 209. He
21 picked up a knife and returned to the screen door, yelling at Red. TT at 209, 257.
22 They continued their fight through the screen door. TT at 257. According to Jared,
23 at one point, James slashed the screen door with the knife, but Robert and James
24 said that the screen was broken by Red punching at James through the screen. TT
25 at 155, 211. James kept saying, "Red, go home, Red, go home." TT at 211. They
26 continued with James kicking the door and Red trying to reach in. TT at 211. Red
27 would say things like "You punk, you pussy, come on fight me." TT at 212. Red

28 ///

1 pointed at his chest and made a gesture with his hands encircling his heart, saying
2 things like "Come on bitch, this is my heart, go ahead and stab me." TT at 212.

3 Meanwhile, Jared and Robert were in the kitchen. TT at 262. They did
4 not think anything of what was happening - they thought it was just a typical
5 ridiculous party fight, just little pot shots, a joke, not serious. TT at 213, 258, 262.

6 Stormie arrived home from the store and saw Red's jacket in the driveway. TT at
7 237. She stopped half way up the driveway and told him to pick it up. TT at 237-38.

8 Red was screaming at James, calling him an "asshole" and saying "Rip my fuckin'
9 heart out." TT at 238. Red was hitting his chest, motioning with the pads of his
10 fingers. TT at 238. Red attempted to step into the house, but stepped out when
11 James told him to "get the F out." TT at 238-39. Then James kicked open the door
12 and came running out of the house after him with the knife in his hand. TT at 211,
13 239, 257. Red was backing up rather fast. TT at 239. Jared, who was inside, and
14 Stormie, who was outside, at first thought James was swinging at Red with his fist.
15 TT at 211, 239, 246. As James was swinging, Red ran backwards. TT at 240. Then
16 Stormie saw a flash from the knife in James' hands in her headlights. TT at 239,
17 246. She saw James stab Red, then Red tripped and fell down. TT at 240. Red
18 was stabbed about 20-30 seconds after telling James, "This is my heart, bitch, stab
19 me." TT at 212-13. Red got back up and they were in hug-like grip and James kept
20 stabbing or hitting him and he fell down again. TT at 211, 240. Stormie jumped out
21 of her car and grabbed James off of Red. TT at 240, 248. She asked Red if he was
22 okay. TT at 240. He was saying "oh, shit" and told her to call the police. TT at 240.

23 James ran back in the house saying "Oh, shit I'm going to prison." TT at 214, 242,
24 247, 257. James then went back outside. TT at 241. He was calling Red's name
25 and asking him if he was all right. TT at 257. James told Red, "I didn't want to hurt
26 you Red, I didn't want to stab you." TT at 241, 247. Red said to James, "I know."
27 TT at 241, 247. Those were his last words. TT at 241, 247. James and Red were
28 best friends. TT at 11, 117, 133, 176. Red had been the best man at James and

1 to give such testimony. Bolin v. State, 114 Nev. 503, 525-26, 960 P.2d 784, 799
2 (1988). The jurors can then accept or reject the expert's testimony as they see fit.
3 Allen v. State, 99 Nev. 485, 488, 665 P.2d 238, 240 (1983). The jury is entitled to
4 believe it or disbelieve it. Clark v. State, 95 Nev. 24, 28, 588 P.2d 1027, 1028
5 (1979). But the jury is entitled to hear it. Accordingly, the proper course would have
6 been for the district court to allow the disputed testimony and then let the state
7 cross-examine the expert to disclose the weaknesses in his opinion. Failure to allow
8 this testimony violated James' rights to due process and a fair trial. Cf. Sparks v.
9 State, 104 Nev. 316, 321-22, 759 P.2d 180, 183-84 (1988) (restricting examination
10 of defense expert psychiatrist constituted reversible error). Reversal is therefore
11 required.

12 III. JAMES WAS DENIED HIS RIGHTS TO DUE PROCESS AND A FAIR TRIAL
13 WHEN THE DISTRICT COURT OVERRULED HIS OBJECTION TO OPINION
14 TESTIMONY BY DETECTIVE SORENSON REGARDING THE LIKELIHOOD OF
15 FINDING A POTENTIAL WEAPON USED BY RED AT THE SCENE.

16 At trial, over defense counsel's objection, Detective Sorenson was
17 allowed to testify that in his opinion, there was little likelihood that officers at the
18 scene would find a broken bottle used as a weapon. TT at 178-79. Detective
19 Sorenson explained that his opinion was formed because none of the other people
20 said they had seen Red use a bottle or a weapon; because James paused a long
21 time before answering a question about whether Red was armed, as though he were
22 making up the answer; and Red's actions with his hands were not consistent with
23 holding a weapon. TT at 179-80. Detective Sorenson's opinion on this subject
24 invaded the province of the jury. The jurors were fully capable of forming their own
25 opinions on this disputed subject. His opinion also served to attack James' veracity
26 and was therefore impermissible for this additional reason as well. Accordingly, the
27 district court erred in allowing this harmful testimony.

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1 Detective Sorenson was essentially testifying as an expert in crime
2 scene investigations. Yet, as this Court has acknowledged, expert testimony "should
3 be in an area foreign to the jury's knowledge." Allen v. State, 99 Nev. 485, 487, 665
4 P.2d 238, 239 (1983). The capacity to determine whether or not, based on the
5 evidence presented, a defendant is lying is an area within the common juror's ability.
6 Opinion testimony is unnecessary when the issue involves a matter of common
7 knowledge. Cf. State v. Gaines, 926 P.2d 641, 646 (Kan. 1996) (expert opinion
8 testimony cannot invade the field of common knowledge, experience, and education
9 of the lay juror). In such circumstances, jurors are capable of forming their own
10 opinions regarding the significance of the facts and the credibility of the defendant.
11 Cf. State v. Farr-Lenzini, 970 P.2d 313, 317-20 (Wash. App. 1999) (error to admit
12 officer testimony that in his opinion defendant was trying to get away and refusing to
13 stop). Based on the evidence presented, the jury could determine for itself the
14 likelihood of James' assertion being true and thus the likelihood of finding a weapon.
15 Cf. State v. Logan, 17 P.3d 101, 106 (Ariz. App. 2000), *vacated on other grounds*, 30
16 P.3d 631 (Ariz. 2001) (error to permit lead investigator in elder fraud case to testify
17 about elder abuse where matter was within common understanding of average juror).

18 Assessing the credibility of witnesses and validity of evidence is a
19 function reserved for the jury, and only the jury. "It is a well settled rule in this state
20 that whenever conflicting testimony is presented, it is for the jury to determine what
21 weight and credibility to give that testimony." Allen at 487, 665 P.2d at 240. It is
22 improper to comment on a witness's veracity or render an opinion on a defendant's
23 guilt or innocence. Cordova v. State, 116 Nev. 664, 669, 6 P.3d 481, 485 (2000);
24 Lickey v. State, 108 Nev. 191, 196, 827 P.2d 824, 827 (1992); see also Winiarz v.
25 State, 104 Nev. 43, 46, 752 P.2d 761, 763 (1988) (reversible error to allow expert to
26 express opinion on defendant's veracity and guilt).

27 The prohibition against commenting on veracity or guilt extends to
28 stating the underlying reasons for the stated opinion. See e.g., Townsend v. State,

1 103 Nev. 113, 119, 734 P.2d 705, 709 (1987) (testimony should have been excluded
2 where expert detailed reasons for reaching a conclusion regarding the veracity of a
3 witness even though expert never stated explicitly conclusion regarding veracity).
4 Yet in this case, Detective Sorenson was allowed to state not only his opinion, but
5 the underlying reasons for it. This, too, was reversible error.

6 Detective Sorenson's opinion was based in part on the facts that none
7 of the other people said they had seen Red use a bottle or a weapon, and Red's
8 actions with his hands were not consistent with holding a weapon. TT at 179-80.
9 However, none of the other people on the scene were in a position to see exactly
10 what Red was doing. Recall that it was dark. App. at 222. Recall that Stormie
11 witnessed events from inside her car, relying on illumination from the headlights to
12 see what was happening. App. at 237, 239. Recall that Jared testified that,
13 although earlier he had not seen a weapon in Red's hands, at the time of the
14 stabbing he could not see a knife in James' hands nor was he able to see Red's
15 hands. TT at 211-12. Recall that when Red was reaching in at James through the
16 screen door, Robert did not have a clear view of Red's hands. TT at 261. Recall
17 that Robert could not see outside from where he was in the kitchen, and thus did not
18 witness the stabbing incident at all. TT at 257, 262. Thus, their observations are not
19 dispositive on the question of whether or not Red had armed himself. Also recall
20 that officers did find a beer bottle, albeit an unbroken one, as well as a broken
21 champagne bottle, at the scene. TT at 103-04, 165-67, 186, 193-94. In addition,
22 they found a broken piece of lawn chair that could have been used as a shank. TT
23 at 169-70. This evidence gives credence to James' claim that Red may have been
24 armed with a crude weapon. The detective should not have been allowed to venture
25 into this disputed area with opinion testimony on what was essentially disputed fact-
26 evidence.

27 Detective Sorenson also said that his opinion was based in part on the
28 fact that James paused a long time before answering a question about whether Red

1 was armed, as though he were making up the answer. TT at 179-80. However, he
2 admitted that when James paused to formulate his answer, he could have been
3 pausing to regain his composure. TT at 187. Thus, he was allowed to state his
4 opinion even though his own testimony was conflicting on the reason for James'
5 hesitation. This was in error.

6 Moreover, admission of this improper opinion testimony was highly
7 prejudicial. Whether or not Red was armed was a key aspect of the case, because if
8 Red had in fact armed himself with a bottle or shank, that certainly strengthens the
9 defense claim that James acted in self defense. Allowing an officer to state an
10 opinion on a matter properly left to the jury usurps the jury's function, particularly
11 where, as here, the opinion has to do with the defendant's credibility and the weight
12 of disputed evidence. Cf. State v. Pugsley, 911 P.2d 761, 768 (Idaho App. 1995)
13 (expert opinion is admissible up to the point where an expression of opinion would
14 require the expert to pass upon the credibility of witnesses or the weight of disputed
15 evidence: to venture beyond that point usurps the jury's function). Admission of
16 such improper testimony is especially harmful in this case because Detective
17 Sorenson was in charge of the crime scene investigation and thus jurors likely
18 placed a great deal of weight on his opinion. Cf. Cordova, 116 Nev. at 669, 6 P.3d
19 at 485 (recognizing possibility that jurors may be improperly swayed by opinion of
20 experienced criminal investigator); Farr-Lenzini, 970 P.2d at 321 (particularly where
21 inadmissible opinion is expressed by law enforcement officer, the opinion may
22 improperly influence the factfinder, resulting in the denial of a fair and impartial trial).
23 Accordingly, it cannot be said that the outcome would have been the same absent
24 improper admission of the detective's opinion testimony. Therefore, reversal is
25 required.

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1 Nev. at 367, 368, 369, 370, 372, 998 P.2d at 171, 172, 173, 174. However, as the
2 Ninth Circuit in Kincade observed, Rise has been effectively overruled by the
3 subsequent United States Supreme Court cases of City of Indianapolis v. Edmond,
4 531 U.S. 32 (2000), and Ferguson v. City of Charleston, 532 U.S. 67 (2001).
5 Kincade, 345 F.3d at ____ (2003 U.S. App. LEXIS 20123 at *32-41). Because
6 Gaines relied on a Ninth Circuit case which has since been repudiated by
7 subsequent United States Supreme Court decisions, this Court is urged to overrule
8 its decision in Gaines and declare NRS 176.0913 unconstitutional as violative of
9 James' right to be free from unlawful search by the government.

10 V.

11 **CONCLUSION**

12 According to the presentence report, "This case is a tragedy." App. at
13 185. It is a tragedy not only because Red lost his life, but also because James was
14 convicted of murder even though he was acting in self-defense and did not intend to
15 kill his best friend. His conviction was based on the erroneous admission of prior
16 bad acts used to unfairly portray him as a person of bad character. Although the
17 state was allowed evidence it should not have, James' case was unfairly limited
18 when the district court disallowed his neurological expert to testify about the effects
19 of being knocked unconscious and overruled his objections to Detective Sorenson's
20 improper opinion testimony. Moreover, the jury was improperly instructed on
21 manslaughter, self defense and malice, and was not instructed on defense of the
22 home, to James' prejudice. Additionally, the evidence does not support a finding of
23 second degree murder. Finally, James' sentence unconstitutionally requires him to
24 undergo DNA testing.

25 The result of all this was that the trial proceeding was unfairly skewed
26 in favor of the state. The district court did not adequately ensure that the playing
27 field was level, and James was prejudiced as a result. This is especially true
28 because this was a close case. For all of these reasons, either individually or